APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 07-2019

[Filed May 19, 2008]

SENADA NDREKA
Petitioner

v.

MICHAEL B. MUKASEY,
United States Attorney General
Respondent

ORDER OF COURT

Petitioner's petition for panel rehearing is denied.

By the Court:
/s/ Richard Cushing Donovan, Clerk

cc:
Charles Christophe
John Furlong
LaTia Bing
Briena Strippoli
Mary Jane Candaux
Jeffrey Bucholtz

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 07-2019

[Filed March 14, 2008]

SENADA NDREKA, Petitioner,

v.

MICHAEL B. MUKASEY, United States Attorney General, Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE BOARD OF IMMIGRATION APPEALS

Before
Torruella, *Circuit Judge*, Wallace,* *Senior Circuit Judge*, and Lipez, *Circuit Judge*.

Charles Christophe and *Christophe & Associates, P.C.*, on brief for Petitioner.

* Of the Ninth Circuit, Sitting by designation.

Briena L. Strippoli, Trial Attorney, Office of Immigration Litigation, *Jeffrey S. Bucholtz*, Acting Assistant Attorney General, and *Mary Jane Candaux*, Assistant Director, on brief for respondent.

Wallace, Senior Circuit Judge. Petitioner Senada Ndreka seeks review of the Board of Immigration Appeals' (Board) denial of her appeal. Substantial evidence supports the Board's decision, and we affirm. *See López de Hincapié v. Gonzales*, 494 F.3d 213, 218-220 (1st Cir. 2007).

Ndreka cannot qualify as a refugee unless she was persecuted based on a protected ground. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 (1987); *see also* 8 U.S.C. § 1101(a)(42)(A). Although Ndreka argues she was subject to persecution based on her political opinion, substantial evidence supports the Board's determination that Ndreka was targeted by criminals interested in using her for sex trafficking and not because of her political opinion. Thus, she is not entitled to asylum relief. See 8 U.S.C. § 1158(b)(1). Because Ndreka failed to show that she was persecuted based on a protected ground for asylum eligibility purposes, she likewise fails in her application for withholding of removal. *See López de Hincapié*, 494 F.3d at 220.

Substantial evidence supports the Board's determination that Ndreka has not shown it is more likely than not that she would be tortured by or at the acquiescence of a government official upon her return to Albania, and the denial of relief under the Convention Against Torture was therefore

appropriate. *See Xue Deng Jiang v. Gonzales*, 474 F.3d 25, 32 (1st Cir. 2007).

Therefore, Ndreka's petition for review is *denied*.

It is so ordered.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 07-2019

[Filed March 14, 2008]

SENADA NDREKA,	)
Petitioner,	)
	)
v.	)
	)
MICHAEL B. MUKASEY,	)
United States Attorney General,	)
Respondent.	)
	)

JUDGMENT

This cause came on to be submitted on a petition for review of an order of the Board of Immigration Appeals.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The petition for review is denied.

By the Court:

/s/ Richard Cushing Donovan
Richard Cushing Donovan, Clerk

[cc: Mr. Christophe, Mr. Furlong, Ms. Bing, Ms. Strippoli, Ms. Candaux, &Mr. Bucholtz.]

APPENDIX C

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike. Suite 2000
Folls Church, Virginia 22041

Lombardi, James A., Esquire
305 Broadway, Suite 700
New York, NY 10007-0000

Office of the District Counsel/BOS
P.O. Box 8728
Boston, MA 02114

Name: NDREKA, SENADA A98-166-821

Date of this notice: 06/06/2007

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Donna Carr
Donna Carr
Chief Clerk

Enclosure

Panel Members:
HESS, FRED

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A98 166 821 - Boston Date: Jun 6, 2007

In re: SENADA *NDREKA*

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James A. Lombardi, Esquire

ORDER:

PER CURIAM. The respondent, a native and citizen of Albania, has appealed from the Immigration Judge's decision dated February 2, 2006. The Immigration Judge found the respondent removable, denied the respondent's applications for asylum and withholding of removal, under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3)(1997), and denied her request for protection under the Convention Against Torture, under 8 C.F.R. §§ 1208.16 through 1208.18

(2006).[1] The respondent argues that the Immigration Judge erred in denying her relief.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. ***See*** 8 C.F.R. § 1003.1(d)(3)(I) (2006). This Board reviews questions of law, discretion and judgment in an Immigration Judge's decision *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii) (2006).

The respondent alleges that she was persecuted on account other political opinion. She says that she was harassed and threatened by two male students when she was in her first year of high school. She said they spoke "dirty words" to her and told her that no one was going to be able to protect her. She said they were affiliated with the Socialist Party and were targeting her because she was active in the Democratic Party. The respondent married in June 2000 and did not return to school. The respondent said her husband left Albania for the United States in February 2002 after being detained two days by the police. Another incident with the same two boys occurred in June 2002. One of them called her a "big-mouth Democrat" and said that, since her husband was gone, no one was going to be able to protect her. In August 2002, one of these boys, with the help of two others, attempted to abduct her. They kept saying "dirty words" to her and telling her she was not safe.

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[1] Because the asylum application was filed prior to May 11, 2005, the provisions of the REAL ID Act of 2005 are inapplicable here. ***See Matter*** of ***S-B-***, 24 I&N Dec. 42 (BIA 2006)

They also said that they were going to take her for "dirty affairs" and forcibly traffic her. Though the respondent told her parents and teachers of some of these incidents, she never told the police about any of them.

The Immigration Judge found the respondent credible, but did not find that she had been targeted on account of her political opinion or any other protected ground. Rather, he concluded that the boys had targeted her for trafficking. *See* I.J. at 8-9.

We concur that the respondent failed to show that she was targeted - on account of a protected ground. An applicant for asylum or withholding of removal must establish that the persecution he or she suffered, or fears, is on account of his or her race, nationality, religion, membership in a particular social group, or political opinion. *See* 8 U.S.C. § 1101(a)(42)(A), 1158(b); 8 C.F.R. § 1208.16(b)(2) (2006).

It has been established by case law that those targeted for violence or crime by gangs are not members of a cognizable "particular social group." *See Abdille v. Ashcroft,* 242 F.3d 477 (3rd Cir. 2001); *Bradvica v. INS,* 128 F.3d 1009, 1013 (7th Cir. 1997). *CF. Lopez-Soto v. Ashcroft,* 383 F.3d 228 (9th Cir. 2004); *Garcia-Martinez v. Ashcroft,* 371 F.3d 1066 (9th Cir. 2004).

However, even assuming that the respondent had been targeted on account of her political opinion, the respondent failed to show that the police would not prosecute the boys for sexually harassing her, threatening her with trafficking, and attempting to

abduct her. The respondent failed to request aid from the police. *See* I.J. at 5, 8-9; Tr. at 60. Consequently, having failed to avail herself of the protection of the government, the respondent failed to show that the government was unwilling or unable to control the alleged persecutor. *See Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998); *Matter of Kasinga,* 21 I&N Dec. 357 (BIA 1996).

The Immigration Judge noted that, though the respondent's family were also supporters of the Democratic Party, none of them have had any problems. *See* I.J. at 6-7; Tr. at 64. Moreover, the Democratic Party is now in power in Albania. *See* I.J. at 7-8; Tr. at 63.

Consequently, we concur with the Immigration Judge that the respondent failed to prove her claims. The respondent has failed to show past persecution or a reasonable likelihood of future persecution on account of a protected ground, and is not eligible for asylum. *See INS v. Cardoza- Fonseca,* 480 U.S. 421 (1987); *Matter of Mogharrabi,* 19 I&N Dec. 439 (BIA 1987); 8 U.S.C. §§ 1101(a)(42), 1158 (1997); 8 C.F.R. § 1208.13 (2006). Likewise, she has failed to show a clear probability that her life or freedom would be threatened on account of a protected ground if returned to Albania, and is not entitled to withholding of removal. *See INS v. Stevic* 467 US. 407 (1984); 8 U.S.C. § 1231(b)(3) (1997); 8 C.F.R. § 1208.16 (2006). Similarly, she has failed to show that she more likely than not would be tortured by, or with the acquiescence of, the government. *See* 8 C.F.R. § 1208.16(c)(2) (2006).

APPENDIX D

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURT
Boston, Massachusetts

File A 98 166 821

[Filed February 2, 2006]

In the Matter of	)	
	)	
SENADA NDREKA,	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	
	)	

CHARGE: Section 237 (a) (1) (A) in that the respondent, at the time of entry into the United States was not in possession of a valid entry document.

APPLICATION: Asylum; Withholding of Removal; Withholding of Removal under the Convention Against Torture.

ON BEHALF OF RESPONDENT:
Isejn Marku, Esquire

ON BEHALF OF DHS:

Susan Hiller, Esquire Department of Homeland Security, Boston, Massachusetts

ORAL DECISION OF THE IMMIGRATION JUDGE

INTRODUCTION

The respondent is a 22-year-old citizen and native of Albania. The Government has charged the respondent in the Notice to Appear in violation of the Immigration and Nationality Act as referenced above. The respondent, through counsel, has admitted the allegations and conceded the charges (see "Exhibit 2"). Accordingly, the Court finds by clear, convincing and unequivocal evidence that the respondent is removable and designates as Albania as the country of removal. The respondent has applied for relief in the form of asylum under- Section 208 of the Immigration and Nationality Acts. Application for asylum shall also be considered applications for withholding of removal under Section 241(b)(3) of the Act. The Court also considers the respondent's application for withholding of removal under the Convention Against Torture.

STATEMENT OF THE LAW

The burden of proof is on the respondent to show that she is eligible for asylum or withholding of removal. To qualify for asylum under Section 208 of the Act, the respondent must show that she is a refugee within the meaning of Section 101(a)(42)(A) of the Act. In order to meet the statutory state of eligibility for asylum, the respondent must satisfy by

clear and convincing evidence the elements in the definition of refugee created by Section 101(a) (42) (A) : The respondent must have a fear of persecution; the fear must be based on past persecution or a well founded fear of persecution in the future; persecution feared must be on account of race, religion, nationality, membership in a particular social group or political opinion; and the respondent must be unable or unwilling to return to her country of nationality because of countrywide persecution.

If the Court finds there was past persecution, then a presumption exists of a well founded fear of future persecution. The burden interests of the Government to show a change in conditions that would rebut that presumption. If the Court finds no past persecution, respondent can still get asylum based on the fear of future persecution if the respondent can show, on a subjective basis, a genuine fear, and on an objective basis that a reasonable person or response or circumstances were in fear of persecution if removed to her country of nationality.

FACTS

The respondent testified at the hearing on the merits and was the only witness to testify. Respondent has also submitted a four page type written statement in support of her application for asylum. Respondent testified that she was born on October lst, 1983 in Shjoder. Respondent lived in Shjoder until she left the United States in January of 2003.

Respondent was asked why she left Albania and she responded that it was on account of these threats

that she received from socialists. According to the respondent, the threats started when respondent was attending high school in Respondent testified that she supported the youth form of the Democratic Party and was active politically.

Respondent was asked to described what happened, and according to respondent, she was threatened by "two guys" whom she identified as Arber Krja and Emir Bushati. They allegedly assailed her for being involved in politics and told her "your family won't protect you". When asked to be specific as to the nature of the threats, respondent testified that these individuals "spoke dirty words" and repeated the assertion that her family would not be able to protect her: "You big mouth democrat. Your family won't be able to protect you." When respondent was asked as to the nature of the threat in terms of that from which she needed protection, respondent was unable to say.

According to respondent, she was not able to finish one year of high school because of these troubles. Her teachers told her that she should not continue with her "activities" which she describes as engaging with other students in demonstrations and handing out fliers. When asked about her first demonstration, she did not have a clear memory but recalled that it took place in the plaza at the "center of our city". The purpose of the demonstration was to support the Democratic Party.

Respondent describes getting married to Fred Ndreka on June 22nd, 2000. The marriage certificate is in file as 'Exhibit 8". Respondent testified that her husband left Albania in February of 2002 because the Socialists Party, the members of the Socialists Party

had "threatened his family". Respondent testified that her husband was taken to the police station where he was again threatened and where he was beaten up. However, further details as to respondent's involvement, which she had specifically observed, and the specific events relating to her husband's release and departure were not offered.

After her husband left Albania, the respondent continued to have problems. In May or June of 2002, a green sedan, again occupied by Arber Krja, followed her and from the passenger's seat respondent was verbally harassed by Mr. Krja who advised her that she was not to believe that she was safe and that he would be back. Some people came on the scene and respondent's tormentors departed. Respondent was asked whether she reported this incident to the police and she responded in the negative.

Respondent testified that she was afraid of this individual and because his family was a communist family. Thereafter, her father had to drive her back and forth to work and ultimately she had to quit her job which was a sales clerk at a grocery store, located a 20 minute walk from her home.

Respondent described one more incident which took place on August 17th, 2002 in the evening. Respondent left her home and went out to buy bread. On her return, "two guys surrounded me". Once again, one of these individuals was Mr. Krja. They tried to force her into a waiting vehicle. Respondent fought them off and screamed. Respondent's mother approached the scene since she had observed the attack from her balcony and the attackers departed.

Respondent fears that if she returns to Albania, she will be kidnaped. She fears that she is a target for trafficking if she is removed to Albania. According to respondent, Albania is still a communist state and there is no one on her side to protect her. She acknowledges that she never involved the police in her problems. Her reasoning is based on her fear of the authorities who had already arrested and assaulted her husband.

Respondent testified she now has two children, approximate ages two and three months. Since the respondent entered the United States in January of 2003, the Court assumes that these children are United States citizens.

Respondent testified that she and her family have always supported the Democratic Party and participated in Democratic Party functions. However, respondent acknowledges that she was never an official member of the Democratic Party, just active and vocal on it's behalf. She feels that there is a political motive in the threats and attacks on her by Arber Krja who is a Socialists Party supporter according to the respondent.

When asked if she fears returning to Albania, respondent testified that she does not wish to return to Albania because of terrorism and because Albania is not stable. However, she acknowledges she has family in Albania and her family have not had problems since her departure. She believes she is a target for kidnaping because she is young and female and because she is a member of the Democratic Party, while "they" are Socialists Party supporters.

On cross-examination, the respondent acknowledged that her husband's bid for asylum has been appealed to the Circuit Court of Appeals and that appeal has been dismissed. She also acknowledged that there is a removal order pending with regard to her husband but he has not left the United States. Respondent was then asked whether the real reason she wants to stay is to raise her children in the United States. Respondent answered in the affirmative.

Respondent acknowledged that her parents and her siblings are still in Albania and that her younger brother is attending high school in Albania. She is aware of no problems being experienced by her family in Albania.

Respondent was asked if her attackers were students. She answered in the affirmative. She was also asked whether the reason, whether the motives of her attackers to grab her was because she was young, pretty and female and she again answered in the affirmative. However, when asked whether the attacks really had nothing to do with the Democratic Party, respondent denied this.

Respondent acknowledged that her father is an unemployed truck driver and that her mother does not work. However, respondent denied that her real motive in coming to the United States was because there were no jobs in Albania. However, respondent concedes that she was never detained by the Albanian government nor was she ever before tortured by officials of the Albanian government.

Finally, it was pointed out to the respondent that the Democratic Party is currently in control of Albania and the president of Albania is a member of the Democratic Party. respondent testified that the state is terrorized by "criminals". Respondent acknowledged that it is the criminals she fears in Albania.

FINDINGS AND ANALYSIS

The thresholds assessment for the Court is the credibility of the respondent. With regard to the problems suffered by the respondent while in Albania, the Court finds that the respondent's testimony was credible. The trafficking of young females by Albanian criminals is a well known problem and recognized by the Secretary of State of the United States. In it's country reports on human rights practices for Albania for the year 2004, the trafficking of women and children remained a problem according to this report. The Secretary of State also acknowledges that police corruption in involvement in trafficking is also a problem. This Court acknowledges and sympathizes with the respondent's concern about returning to Albania in light of the continuing situation and the fact that the respondent is a young female who has already apparently become a target in that country.

However, in this particular case, the respondent never eluded to a belief or, any evidence, in that the police were corrupt with regard or somehow involved with regard to the attempted abduction of her person in August of 2002. Also the Court notes that the respondent did not assert that the police that she felt the police were complisit in any attacks on her person but that in general, she feared the police because of

their treatment of her husband. Nor did she point to any knowledge or her part or other evidence that she was aware of any involvement or complicity of the police with trafficking. In fact, when asked under cross-examination what she feared in Albania, respondent acknowledged that it was the "criminals".

As outlined above, the respondent must establish that she is a "refugee" to be eligible for asylum. In this same prerequisite is necessary to obtain withholding of removal. In this particular case, the respondent has not established that she is a refugee because she has failed to establish a nexus between the problems she was suffering in Albania and either race, religion, nationality, membership in a particular social group or opinion. It appears obvious from the facts that a small group of individuals, known to the respondent, had targeted her for what was an apparently a criminal enterprise on their part, and had nothing to do with her politics. The respondent has established no nexus between the problems that she suffered in Albania and any one of the five protected areas. Accordingly, the Court can not find that respondent is eligible either for asylum or withholding of removal.

In regard to withholding of removal under the Convention Against Torture, it was the respondent's burden to establish that it was more likely than not that she would be tortured if returned to Albania. Further, it was her burden to establish that this harm would be inflicted by or at the instigation of or would be consent or acquiescence of a public official or other person acting in an official capacity. There has been no evidence presented either relating to torture, or to the involvement of officials of the Albanian government in

such an activity. Therefore, the Court can not concluded, more likely than not that the respondent would be singled out for torture if she be removed to Albania. Therefore, respondent's application for withholding of removal under the Convention Against Torture is denied.

Based on the foregoing, it is therefore the Courts:

ORDER

IT IS HEREBY ORDERED that the respondent's application for asylum under Section 208 of the Act is denied.

IT IS FURTHER ORDERED that the respondent's application for withholding of removal under Section 241(b) (3) of the Act is denied.

IT IS FURTHER ORDERED that the respondent's application for withholding of removal under the Convention Against Torture is denied.

IT IS FURTHER ORDERED that the respondent be removed to Albania.

FRANCIS L. CRAMER
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before FRANCIS L. CRAMER in the matter of:

SENADA NDREKA

A 98 166 821

Boston, Massachusetts

was held as herein appears, and that this is the original transcript thereof fos the file of the Executive Office for Immigration Review.

/s/Geralene K. Logan
Geralene K. Logan (Transcriber)

Deposition. Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

September 26, 2006
(Completion Date)

AFFIRMATION OF SERVICE

I, Charles Christophe, Esq., an attorney admitted to practice law in the U.S. Court of Appeals for the Second Circuit, affirm the following under the penalties of perjury:

That on June 29, 2007, I served a true copy of the within documents on the following parties by frst class mail to the following addresses and locations:

Settlement Counsel
United States Court of Appeals
For the First Circuit
Civil Appeals Management Program
1 Courthouse Way, Suite 3440
Boston, MA 02210

Dated: June 29,2007
New York, New York

/s/Charles Christophe
Charles Christophe, Esq.

CHRISTOPHE & ASSOCIATES, P.C.
2 Wall Street, 8th Floor
New York, NY 10005
344-3800
Attorneys for Petitioner

AFFIRMATION OF SERVICE

I, Charles Christophe, Esq., an attorney admitted to practice law in the U.S. Court of Appeals, affirm the following under the penalties of perjury:

That on June 29, 2007, I served a true copy of the within documents on (he following parties by first class mail to the following addresses and locations:

The Honorable Alberlo Gonzales
United States Department of Justice
Office of Immigration Litigation, Civil Division
Ben Franklin Station, P.O. Box 878
Washington, D.C. 20044

Dated: June 29, 2007
New York, New York

/s/Charles Christophe
Charles Christophe, Esq.

CHRISTOPHE & ASSOCIATES, P.C.
2 Wall Street, 8th Floor
New York, NY 10005
344-3800
Attorneys for Petitioner

AFFIRMATION OF SERVICE

I, Charles Christophe, Esq., an attorney admitted to practice law in the U.S. Court of Appeals for the Second Circuit, affirm the following under the penalties of perjury:

That on June 29, 2007, I served a true copy of the within documents on the following parties by first class mail to the following addresses and locations:

Settlement Counsel
United States Court of Appeals
For the First Circuit
Civil Appeals Management Program
1 Courthouse Way, Suite 3440
Boston, MA 02210

Dated: June 29,2007
New York, New York

/s/Charles Christophe
Charles Christophe, Esq.

CIIRISTOPHE & ASSOCIATES, P.C.
2 Wall Street, 8th Floor
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344-3800
Attorneys for Petitioner